
From: Carlin, Jayne
To: allison.castellan@noaa.gov; Wayne, Don; Henning, Alan; Wu, Jennifer; Croxton, Dave
Sent: 11/5/2014 2:15:56 PM
Subject: Comments Within Oregon's March 2014 Submittal

Hi All,

I quickly reviewed Oregon's March 2014 submittal to determine whether there are any comments contained within the document and which have not been already addressed by the draft Response to Comments (RtC) document. A vast majority of the submittal contained information addressing our concerns and to support Oregon's position that Oregon has an approvable program.

The one part of the submittal which I believe could be classified as a "comment" would be the discussion on additional MMs shown below. **I do believe we covered all aspects of the additional MMs in RtC but would like your thoughts.**

Legal/Policy Framework for Additional Measures under CZARA

EPA and NOAA's determination that Oregon is required to identify additional measures for forestry is based on the state's CWA Section 303(d) listing of a number of coastal streams for temperature impairment. It is important to note that additional measures in coastal nonpoint source plans under CZARA are not intended to implement the CWA, but they are intended to be operated in conjunction with the CWA. Accordingly, it is appropriate for Oregon to identify additional measures to operate in conjunction with DEQ's TMDL program and its existing Section 319 nonpoint source programs.

Moreover, the EPA and NOAA guidance specifies that states are to determine what additional measures are needed and states are to have significant latitude in making the determination of what additional measures are needed. While states may elect to adopt additional or more stringent measures the 6217(g) guidance, e.g., extended buffers, they cannot be required to adopt that approach.

When confronted with similar concerns over water quality listings and regulation of forestry, EPA and NOAA have in practice approved additional measures that were based on a state's commitment to strengthening of forest practice regulations as it determined necessary and to adopt and implement TMDLs for water quality limited streams (e.g., California Coastal Program Approval, 2000). EPA and NOAA also have approved programs even when the additional management measures proposed to be implemented by the state fell well short of the BMPs that the federal agencies had recommended.

As you know Oregon promoted its approach to maintaining forestland to protect resources and conducted a lengthy comparison with Washington. Oregon also asserted that additional regulations may be counterproductive, in terms of water quality, if they increase the rate of conversion (of forestland). **Would you classify this as a comment that should be included in the RtC? If so, did we sufficiently address it in the RtC?**

Oregon also disagreed with the NOAA and EPA that additional management measures are necessary for "landslides are necessary to ensure water quality standards can be achieved. Scientific evidence and research show a significant dependence on geological setting, storm event size, and other non-human factors. Existing data on landslide rates also does not show how possible effects translate across space and time." Oregon noted making revisions to the FPA with regard to forest road measures since 1998 and contends that its forest practices regulations for forest roads are sufficient to ensure achievement of water quality standards, and that additional management measures for roads are not necessary at this time. **Would these be considered comments that should be included in the RtC? If so, did we sufficiently address it in the RtC?**

Cheers,

Jayne

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